

## **LAND BOARD AGENDA ITEM**

**December 17, 2007**

### **REQUEST FOR FINAL CONSIDERATION OF THE Dept. of Corrections Transfer of Pine Hills (Old Campus) to Custer County under Section 77-2-351 MCA**

#### **PROPOSAL:**

Under authority of §77-2-351MCA, the Montana Department of Corrections (DOC) proposes to transfer the Old Campus of the Pine Hills Correctional Facility to Custer County for use as storage and other public purposes. The property comprises 17.119 acres including associated buildings located at the intersection of Haynes Avenue and Leighton Blvd in Miles City, Montana.

#### **HISTORY:**

On two occasions in 2007 DOC attempted to sell the Old Campus at public auction, and on both occasions there were no bidders despite commercial advertising within and outside of Montana.

DOC proposes the transfer to Custer County to relieve the state of the financial responsibility and liability of maintaining the abandoned, deteriorating buildings, which are thought to create a safety hazard for the public. It also relieves DOC of the cost of asbestos mitigation and demolition.

The proposed transfer was presented before the Senate Administration Committee on September 5, 2007. No issues or concerns were raised by this committee. The Land Board gave preliminary approval in September 2007 for the transfer contingent upon completion a favorable environmental assessment.

#### **PROCESS:**

DOC completed an Environmental Assessment and determined that the proposed transfer is a categorical exclusion. A 60 day comment period began September 28, 2007 and ended November 30. Only two comments were received, both in favor of the transfer to Custer County.

In accepting the property, Custer County will indemnify the State of Montana and assume all responsibility for the property's present condition and any future clean-up of the property and buildings. Further, in accordance with §77-2-351, MCA, in the event that the property shall cease to be used for a public purpose or cease to be owned by Custer County, title to the property shall revert to the Montana Department of Corrections.

#### **AGENCY RECOMMENDATION:**

DOC requests final Land Board approval for the transfer of this property to Custer County.

Leighton

Pine Hills School "Old Campus"  
Transfer Parcel  
(Approx 17.119 acres)

Haynes

PARENT CENTER  
DORMITORY

SIDEWALK

STORAGE  
GARAGE

ELECTRIC AND  
PLUMBING

LAUNDRY

HOUSE

POOL/CELLAR

POOL  
SHED

OLD  
ADMINISTRATION

KITCHEN AND  
BATH HOUSE

AUTO AND  
CARPENTRY  
SHEDS

MACHINERY  
SHED

TO DAIRY BARN

ADMINISTRATION BUILDING/PODS A-E

MAINTENANCE

FOX TROT-RANGE RIDER  
DORMITORY

SCH  
ACADEMY

**Please return to;**  
**Custer County Clerk and Recorder**  
**1010 Main St.**  
**Miles City, MT 59301**

**THE STATE OF MONTANA**  
**GRANT DEED**

KNOW ALL MEN BY THESE PRESENTS that the **STATE OF MONTANA, DEPARTMENT OF CORRECTIONS** (hereinafter referred to as the "Grantor") acting by and through the State Board of Land Commissioners (hereinafter referred to as the "Board"), whose address is P.O. Box 201601, Helena, MT, 59620-1601, in consideration of Grantee's promise to use the following lands for public purposes under §77-2-351, MCA, does hereby grant to the **CUSTER COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF MONTANA** (hereinafter referred to as the "Grantee"), whose address is Custer County, 1010 Main St., Miles City, MT the following described lands in the County of Custer, State of Montana:

A tract of land lying in the NW4NW4 of Section 35, Township 8 North, Range 47 East, more particularly described as follows: Beginning at a point on the north line of said Sec 35 lying S89°49'43"E, a distance of 59.93' from the NW corner of said section 35; thence continue easterly along said line, a distance of 895.70'; thence S00°24'24"E, a distance of 832.33'; thence N89°59'44", a distance of 339.58'; thence N02°21'48"E, a distance of 25.32'; thence N89°54'32"W, a distance of 1.50' to a witness corner; thence continue westerly along said line, a distance of 219.25'; thence N89°14'50"W, a distance of 346.31' to the easterly right-of-way line of Haynes Avenue; thence N00°04'09"W along said right-of-way line, a distance of 92.10'; thence N13°16'30"W along said right-of-way line a distance of 61.63'; thence N00°10'21"W along said right of way line, a distance of 520'; thence N13°57'32"E along said right of way line, a distance of 82.45'; thence N00°06'40"W along said right-of-way line, a distance of 52.66' to the POINT OF BEGINNING, containing 745,683 square feet or 17.119 acres, more or less.

PROVIDED FURTHER, the property is conveyed "as is" in its present condition; that Custer County hereby agrees that the State has no obligation to rehabilitate or remediate any condition existing upon this property; that Custer County hereby agrees to assume all responsibility and liability for the property's present condition and any future clean-up of the property, buildings, and any contents thereon (i.e., asbestos, toxic and hazardous substances under CERCLA or RCRA, etc.); and hereby agrees to hold harmless and indemnify the State of Montana against any future legal action, administrative proceeding, or administrative order hereafter instituted requiring the clean-up of said land, arising out of or attributable to the State's prior operations and activities thereon, or ownership by the State of Montana of the above-described lands prior to the time of Closing hereunder.

PROVIDED FURTHER, in accordance with §77-2-351, MCA, in the event that the above-described land shall cease to be used for a public purpose

or cease to be owned by the Grantee, upon written notice to the Grantee by the Grantor, title to the above-described land shall revert to the Montana Department of Corrections. For the purpose of determining whether a reversion of title has occurred, a "public purpose" shall not include the construction or operation of any public parking lot, restaurant, bar, hotel, motel, private office space, retail store, storage space, gas station, convenience store, shopping center, or private residence, or any similar commercial private enterprise. Within 30 days of such notice of reversion, the Grantee may request a contested case hearing before the Board or the Board's designee to determine whether the terms of this Deed have been violated and reversion of this land is warranted. The Board shall be the trier of fact and its decision shall be reviewable by the local District Court as any other decision under a contested case proceeding under § 2-4-701, et seq., MCA.

PROVIDED FURTHER, that this conveyance is subject to any and all valid reservations, exceptions, restrictions, limitations, conditions, or provisions, if any, as may be contained in Patents, Deeds, grants, or laws of the United States of America; and EXCEPTING AND RESERVING to the State of Montana all title in and to all coal, oil, oil shale, gas, phosphate, sodium and other mineral deposits, geo-pressured brine, associated gases and steam in whatever form, and any other geothermal resources having a temperature greater than 40° C in the above described land which have not already been reserved by the United States, except sand, gravel, building stone, and brick clay, whether now known or hereafter found to exist therein, together with the right for itself and its lessees to enter upon the said lands, to prospect for, drill, develop, mine and remove such mineral deposits and utilize the geothermal resources so reserved and to occupy and use so much of the surface of such lands as may be required for all purposes reasonably extending to the exploring for, mining and removal of such minerals and the production of heat, steam, electrical power, and of electrolytic by-products from geothermal resources thereon, but the lessee shall make just payment to the Grantee for all damage done to the premises by reason of such entry upon the land and the use and occupancy of the surface thereof.

SUBJECT TO the following deed restrictions:  
Custer County will install a fence (approximately 12 feet in height) between the south side of the property and the current Pine Hills campus as a barrier; and,  
Access to the property will not be allowed through the current Haynes Avenue access to Pine Hills; and,  
All exceptions, reservations, easements, rights of way and restrictions of record.

TO HAVE AND TO HOLD the said land with all its appurtenances thereto unto the said Grantee, Custer County, Montana.

IN TESTIMONY WHEREOF, the State of Montana has caused these presents to be executed by the Governor and to be attested by the Secretary of State and countersigned by the Montana Department of Corrections, and the Great Seal of the State and the Seal of the State Board of Land Commissioners to be hereunto affixed this \_\_\_\_ day of \_\_\_\_\_, 2007.

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Brian Schweitzer, Governor of the State of Montana

Great Seal of Montana  
Seal

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Brad Johnson, Secretary of State

Board of Land Commissioners  
Seal

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Mike Ferriter, Director  
Department of Corrections

Accepted by CUSTER COUNTY

By: \_\_\_\_\_

